

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Tariffs Implementing Access Charge ) CC Docket No. 97-250  
Reform ) CCB/CPD 98-12

**COMMENTS OF U S WEST, INC. ON MCI  
EMERGENCY PETITION FOR PRESCRIPTION**

U S WEST, Inc. ("U S WEST") submits these Comments on the Emergency Petition for Prescription filed by MCI Telecommunications Corp. ("MCI") in the above-referenced docket.<sup>1</sup> MCI essentially has compiled a laundry list of complaints about the Federal Communications Commission's ("Commission") access reform policies, many of which were previously raised, and rejected, in the course of the Access Reform proceeding. Several of MCI's arguments, while valid, are more appropriately addressed in proceedings currently pending before the Commission. Therefore, the Commission should deny MCI's untimely Emergency Petition.

I. **THE COMMISSION SHOULD REJECT MCI'S DEMAND FOR  
THE IMMEDIATE PRESCRIPTION OF ACCESS RATES AT "COST"**

Parroting a claim already pending before the Commission,<sup>2</sup> MCI argues that the Commission must move immediately to prescribe access rates at the level of

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<sup>1</sup> MCI Emergency Petition for Prescription, filed Feb. 24, 1998 ("Emergency Petition"). Public Notice, MCI Telecommunications Corporation Petition the Commission for Prescription of Tariffs Implementing Access Charge Reform, DA 98-385, rel. Feb. 26, 1998.

economic cost.<sup>3</sup> MCI's arguments have no more force now than they did when MCI made them in the course of the Access Reform proceeding,<sup>4</sup> and the Commission should reject them. Indeed, at least this aspect of the MCI Emergency Petition is plainly an untimely petition for reconsideration of the Access Reform Order, and the Commission should reject it on that ground alone.

In the Access Reform Order, the Commission decided to adopt a "market-based" approach, under which local competition will gradually drive access prices toward economic cost.<sup>5</sup> The Commission deferred the precise composition of this approach to a further order which it has not yet issued.<sup>6</sup> Thus, MCI asks the Commission to abandon a course that the Commission has not yet implemented. MCI bases its demands on its claim that local competition has not developed and cannot develop quickly enough to bring access rates to a level MCI deems suitable.<sup>7</sup> In so doing, MCI merely echoes the arguments made by the Consumer Federation of

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<sup>2</sup> Consumer Federation of America, *et al.* Petition for Rulemaking, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, filed Dec. 9, 1997 ("CFA Petition").

<sup>3</sup> Emergency Petition at 14.

<sup>4</sup> See Comments of MCI Communications Corporation, CC Docket Nos. 96-262, *et al.*, filed Jan. 29, 1997.

<sup>5</sup> In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 7 Comm. Reg. (P&F) 1209, 1278-79 ¶¶ 262-63 (1997) ("Access Reform Order"); appeals pending sub nom. Southwestern Bell Telephone Company v. FCC, Nos. 97-2618, *et al.* (8th Cir.). on recon., 12 FCC Rcd. 10119, Second Order on recon., FCC 97-368, rel. Oct. 9, 1997 ("Access Charge Reform Reconsideration Order"), erratum, rel. Nov. 13, 1997, pet. for recon. pending; appeals pending sub nom. AT&T v. FCC, Nos. 97-1678, *et al.* (D.C. Cir.).

<sup>6</sup> Access Reform Order, 7 Comm. Reg. (P&F) at 1280 ¶ 270.

<sup>7</sup> Emergency Petition at 1-2, 3-5, 7-9.

America, International Communications Association and National Retail Federation in their pending Petition for Rulemaking (CFA Petition), adding nothing new to the record.

One claim merits attention. MCI argues that not moving access charges to cost will hinder local competition, as incumbent local exchange carriers ("LEC") "continue to line their pockets with capital that long distance companies could otherwise invest in local facilities."<sup>8</sup> Overblown rhetoric aside, if competitive markets drive prices to cost, as MCI repeatedly asserts, reducing access rates can produce no greater revenues for the interexchange carriers ("IXC"), because competition will drive interexchange rates to the new cost level. Or is MCI telling us that the long distance market is not competitive? In fact, MCI has it exactly backward. Immediately reducing access rates to the level of economic cost would hinder the development of competition by reducing the anticipated profit margins of prospective facilities-based local market entrants, thereby discouraging entry. MCI's argument thus could become a self-fulfilling prophecy.

Moreover, the Commission may not arbitrarily reduce incumbent LECs' access rates without providing some other means by which they may recover the foregone revenues. So long as the Commission limits what the LECs may charge for their services, it has a constitutional obligation to allow them a reasonable opportunity to recover their expenses and investment and to earn on that investment. For the reasons articulated in U S WEST's response to the CFA

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<sup>8</sup> Id. at 7-8.

Petition,<sup>9</sup> the Commission should reject this portion of MCI's Emergency Petition.

II. THE COMMISSION SHOULD ADOPT A STANDARD DEFINITION OF "PRIMARY LINE," BUT NOT THE DEFINITION PROPOSED BY MCI

MCI correctly notes that the Commission has commenced a proceeding in which it proposes to define "Primary Lines."<sup>10</sup> Pending resolution of that docket, incumbent LECs understandably have adopted differing definitions of primary and secondary lines that reflect the positions they have taken in the Primary Line proceeding. MCI complains of this variation and urges the Commission to adopt a standardized definition. U S WEST agrees with MCI on that score; the Commission should indeed conclude the Primary Line proceeding and provide a uniform definition for all the LECs to apply. As to the other points raised by MCI, however, U S WEST believes MCI is clearly wrong.

MCI would have the Commission define a "primary line" as the "only line on the IXC end user billing account."<sup>11</sup> MCI does not expressly discuss how it would treat additional lines at the customer's premises served by the same IXC, but such lines presumably would be considered non-primary. In contrast, an additional line presubscribed to another carrier apparently would be considered primary under MCI's proposed definition.<sup>12</sup>

If the Commission were to apply MCI's definition of a "primary" line, the

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<sup>9</sup> Comments of U S WEST, RM 9210, filed Jan. 30, 1998.

<sup>10</sup> Emergency Petition at 17-18 (citing CC Docket No. 97-181 proceeding).

<sup>11</sup> Id. at 18.

<sup>12</sup> The absence of specificity in MCI's definition is somewhat ironic given its complaints regarding the LECs' supposedly "vague and circular" definitions. Id.

inevitable outcome would be widespread gaming of the system resulting in virtually no non-primary lines. Customers, encouraged and assisted by IXC's, would quickly tumble to the fact that they can avoid non-primary status for additional lines by the simple expedient of presubscribing those lines to different carriers. As U S WEST demonstrated in the proper context of the Commission's pending proceeding, the Commission should adopt a standard definition of primary line as the line that has been installed at a residence service address for the greatest length of time.<sup>13</sup> This approach prevents the gaming that would result from MCI's proposed definition, while avoiding the need for intrusive and costly monitoring procedures.

In support of its claims about the difficulties raised by the lack of a uniform definition of primary lines, MCI claims the Commission has determined that the LECs' definitions are "often" vague and circular.<sup>14</sup> The truth is much less dramatic. In the Designation Order in this proceeding, the Commission required three LECs (not including U S WEST) to explain and/or modify their definitions because two were circular and one was vague.<sup>15</sup> MCI has thus substantially overstated the extent of the problem.<sup>16</sup> In any event, the Commission can (and presumably will) address these problems in the course of reviewing the affected LECs' tariff filings.

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<sup>13</sup> Comments of U S WEST, Inc., CC Docket No. 97-181, filed Sep. 25, 1997 at 3.

<sup>14</sup> Emergency Petition at 17.

<sup>15</sup> In the Matter of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, Order Designating Issues for Investigation and Order on Reconsideration, DA 98-151, rel. Jan. 28, 1998 ¶ 15 ("Designation Order").

<sup>16</sup> MCI twice makes the astonishing claim that "the ILECs have failed to . . . [d]efine primary and non-primary residential lines." Emergency Petition at iii and 14-15. It

### III. MCI'S EMERGENCY PETITION IS A TRANSPARENT ATTEMPT TO TRANSFORM PICC AND USF CHARGES INTO END-USER CHARGES

In its Emergency Petition, MCI states that it has decided to pass through Presubscribed Interexchange Carrier Charges ("PICC") and Universal Service Fund ("USF") charges to its customers.<sup>17</sup> To facilitate its pass-through policy, MCI demands that incumbent LECs provide detailed information regarding line counts and the amount of USF contributions allocated to each access element. While nothing in the Commission's rules prohibits MCI from passing through PICC and USF charges to its customers, the Commission should not impose additional reporting obligations on incumbent LECs solely to facilitate MCI's transformation of these carrier charges into end-user charges.

First, MCI claims that it does not have sufficient line count data to "make certain" that it is collecting the correct amount of PICCs from its customers.<sup>18</sup> MCI also complains that it has no cost-efficient manner in which to pass through the PICC to zero-usage customers.<sup>19</sup> Not only does MCI demand additional information from incumbent LECs, but it suggests that the Commission "should immediately require [incumbent LECs] to recover the PICC from end users" so that long distance rates are not driven upward.<sup>20</sup>

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then refutes its own statement by reprinting the supposedly non-existent definitions. Id. at Appendix A.

<sup>17</sup> Id. at 9.

<sup>18</sup> Id. at 15.

<sup>19</sup> Id. at 8.

<sup>20</sup> Id. at 8-9.

The underlying premise of MCI's argument is that the PICC is a new charge that must be levied on its end-user customers. That is not the case. In the Access Reform proceeding, the Commission established the PICC to replace the per-minute Carrier Common Line charge previously assessed on IXC's. MCI is merely seeking to evade its responsibility to continue paying these carrier charges by transforming the PICC into an end-user charge.

Second, MCI argues that incumbent LECs should be required to itemize the amount of USF contributions assigned to each access element.<sup>21</sup> In fact, U S WEST has repeatedly advocated that implicit universal service subsidies should be replaced by an explicit end-user surcharge that is reflected in the end-user's retail bill for both intrastate and interstate services.<sup>22</sup> In the Universal Service proceeding, however, the Commission chose to adopt rules that treat USF contributions as an exogenous adjustment to the common line basket, rather than a separate rate element.<sup>23</sup> Unless the Commission reverses its position with respect to USF contributions, MCI's demand is completely impractical.

The issue here is not that MCI lacks access to information regarding USF contributions -- U S WEST and other incumbent LECs are required to report the amount of USF contributions assessed on IXC's. Rather, MCI's request for USF

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<sup>21</sup> Id. at 26.

<sup>22</sup> See, e.g., U S WEST Petition for Reconsideration and Clarification, CC Docket No. 96-45, filed July 17, 1997 at 9-10.

<sup>23</sup> In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9171 ¶¶ 772-74; appeals pending sub noms. Texas Office of Public Utility Counsel, et al. v. FCC, et al., Nos. 97-60421, et al. (5th Cir.).

contribution information itemized by access element is designed solely to facilitate MCI's pass-through of USF contributions to end users. Once again, the Commission should not impose a burdensome billing requirement on incumbent LECs merely to accommodate MCI.

#### IV. U S WEST PROVIDES DETAILED INFORMATION TO ENABLE IXCS TO PASS-THROUGH THE PICC TO THEIR CUSTOMERS

As mentioned in the previous section, MCI complains that it has not received auditable line count data from some LECs, which makes more difficult the task of passing-through the PICC to its end users.<sup>24</sup> U S WEST is not included among the LECs mentioned by MCI, and we thus conclude it has no quarrel with the information U S WEST has provided.

U S WEST, in fact, provides detailed line count reports to all IXCs, including MCI, which satisfy the requirements established by the Commission in the Access Charge Reform Reconsideration Order issued on October 9, 1997.<sup>25</sup> In accordance with the Order and Billing Forum ("OBF") industry standard, U S WEST provides a separate detail report giving IXCs billed PICC telephone numbers by state, LATA, Carrier Identification Code ("CIC"), and type (i.e., primary or non-primary). The report is provided at each billing period unless the IXC chooses not to receive the report. U S WEST's reports are sufficiently detailed to enable IXCs to pass-through the PICC to their customers if they so desire, even though such a pass-through is neither required nor envisioned by the Commission's rules.

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<sup>24</sup> Emergency Petition at 15.

<sup>25</sup> Access Charge Reform Reconsideration Order ¶ 16.

V. **THE COST OF IMPLEMENTING A STANDARDIZED "SNAP-SHOT" DATE USED TO BILL THE PICC FAR OUTWEIGHS THE BENEFIT OF SUCH A REQUIREMENT TO MCI**

MCI urges the Commission to prescribe a standardized "snap-shot" date on which all incumbent LECs would be required to bill the PICC.<sup>26</sup> In effect, MCI is advocating a uniform billing date across the entire industry. Such a requirement would impose an incredible burden on incumbent LECs by requiring them to coordinate their individual billing systems.

MCI has not presented any compelling justification for implementing its extreme proposal. To the extent that incumbent LECs do not take the "snap-shot" of customers on a standardized date, MCI is just as likely to not be assessed a PICC for one of its customers in a given month as it is to be assessed PICCs by more than one incumbent LEC for the same customer. Thus, MCI is not really disadvantaged at all by the current rule.

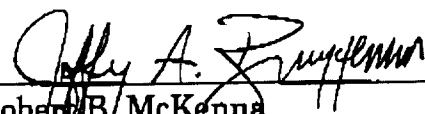
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<sup>26</sup> Emergency Petition at 24-25.

For these reasons, the Commission should deny MCI's Emergency Petition.

Respectfully submitted,

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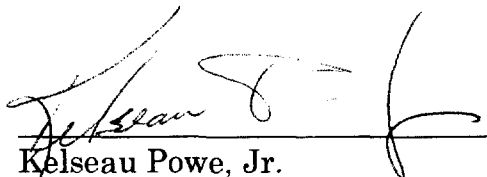
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March 18, 1998

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 18<sup>th</sup> day of March, 1998, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC. ON MCI EMERGENCY PETITION FOR PRESCRIPTION** to be served, via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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